

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION**

OLIVIA Y., by and through her next friend, James D. Johnson;
JAMISON J., by and through his next friend, Clara Lewis;
DESIREE, RENEE, TYSON, and MONIQUE P.,
by and through their next friend, Sylvia Forster;
JOHN A., by and through his next friend, James D. Johnson;
CODY B., by and through his next friend, Sharon Scott;
MARY, TOM, MATTHEW, and DANA W.,
by and through their next friend, Zelatra W.; and
SAM H., by and through his next friend, Yvette Bullock;
on their own behalf and behalf of all others similarly situated

PLAINTIFFS,

v. CIVIL ACTION NO. 3:04CV251LN

HALEY BARBOUR, as Governor of the State of Mississippi;
DONALD TAYLOR, as Executive Director of the Department
of Human Services; AND BILLY MANGOLD,
as Director of the Division of Family and Children's Services

DEFENDANTS.

**PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION TO STRIKE THE
DECLARATION OF SHIRIM NOTHENBERG**

Plaintiffs respectfully file this response to Defendants' Motion to Strike the Declaration of Shirim Nothenberg. The Declaration of Shirim Nothenberg was filed on October 5, 2010, in support of Plaintiffs' Motion for Contempt and for the Appointment of a Receiver, and the Motion to Strike was filed on December 3, 2010. Due to the self explanatory nature of this response, Plaintiffs respectfully request that the Court waive any requirement that a supporting memorandum of law be filed.

Plaintiffs submitted the Declaration of Shirim Nothenberg for three purposes. First, the declaration sought to provide the Court with a summary of the most important documents relied upon in the Motion for Contempt and for the Appointment of a Receiver. Second, the

declaration attached eight documents as exhibits. Lastly, the declaration provided the personal knowledge of counsel, who has represented Plaintiff Children since the beginning of the instant lawsuit.

Defendants assert no basis for striking the attached documents and do not challenge any of the attached documents, apparently conceding their admissibility and relevance. However, Defendants move to strike the declaration in its entirety based in part on the mistaken ground that Plaintiffs' counsel Shirim Nothenberg does not have personal knowledge of the facts discussed in the declaration. But Ms. Nothenberg has served as counsel since this litigation was filed, does in fact have personal knowledge of facts that have occurred during the pendency of this litigation, and appropriately shared such personal knowledge in the declaration. Defendants further seek to exclude factual assertions made in the declaration based upon other evidentiary challenges, none of which are applicable.

Despite the flaws in Defendants' argument, in the interests of judicial economy and in order to avoid satellite litigation, Plaintiffs have moved to withdraw the Declaration of Shirim Nothenberg and substitute a declaration that simply attaches true and correct copies of the eight documents that were exhibits to the original declaration. As the challenged declaration has been requested to be withdrawn, Plaintiffs request that this Court find Defendants' motion to strike moot.

Respectfully submitted, this 23rd day of December, 2010.

/s/ Shirim Nothenberg
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Plaintiffs' Counsel

CERTIFICATE OF SERVICE

I hereby certify that on December 23, 2010, I electronically filed the foregoing Plaintiffs' Response To Defendants' Motion To Strike The Declaration Of Shirim Nothenberg with the Court using the ECF system, which sent notification of such filing to the following:

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/s Shirim Nothenberg